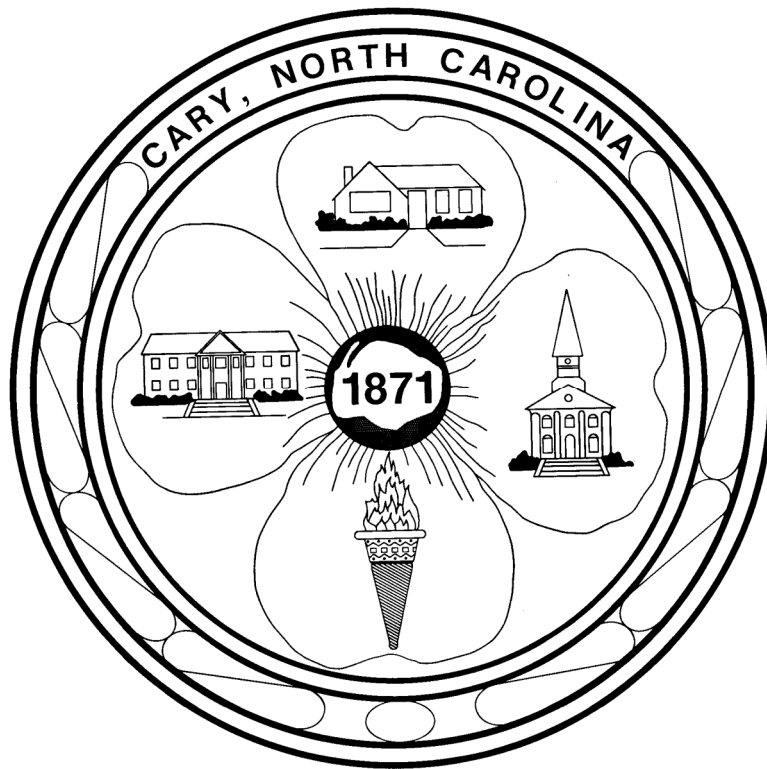


Letters of Interest

TOWN *of* CARY

Old Reedy Creek Road Trailhead Project

Project: EL-5100 GG; WBS Element: 41821.1.17; Federal Aid No: STPDA-0503(24)



**Parks, Recreation, & Cultural Resources Department
October 2011**

TOWN OF CARY REQUEST FOR LETTER OF INTEREST

THE TOWN OF CARY DESIRES TO ENGAGE QUALIFIED PRIVATE ENGINEERING FIRMS (PEF) TO PROVIDE PLANNING AND DESIGN SERVICES FOR:

OLD REEDY CREEK ROAD TRAILHEAD PROJECT

The Town of Cary is initiating the site selection and design of a trailhead parking lot to be located off Old Reedy Creek Road in north Cary. This project is grant funded and it was one of five projects selected in 2010 by the Capital Area Metropolitan Planning Organization (CAMPO) to be funded with The Surface Transportation Program-Direct Allocation (STP-DA) funding. Completion of the project must be by March 31, 2013.

The general vicinity where the trailhead is to be located is the focal point of considerable trail activity. This location is the starting point for the Town's 5.5 mile Black Creek Greenway, Wake County's mountain bike trails linking to Lake Crabtree County Park and the 5,000 acre Umstead State Park. The specific site for the trailhead has not been identified. The selected consultant will need to identify a site. To do so, the consultant will need to work with a number of agencies that either own property along Old Reedy Creek Road or have a stake in this project. In addition to the Town of Cary, the consultant will need to coordinate with the North Carolina Department of Transportation (NCDOT), Raleigh Durham International Airport (RDU) North Carolina Division of State Parks (Umstead State Park) and Wake County (Lake Crabtree). Given the number of stakeholders in this project, it will be necessary to create a formal working group to review possible sites for the trailhead.

The primary and/or subconsultant firm(s) shall be pre-qualified by NCDOT to perform site analysis and identification, including coordination and negotiation among land owners, governing bodies and any other affected entities, structural design, hydraulics, hydrology, utility coordination, utility engineering, permitting, wetland impacts, any other required environmental documentation and permitting, and site design required to complete the project.

The selected firm will report directly to the Town of Cary. The selected firm is to administer the contract and to ensure that all work is performed in accordance with the contract requirements.

The PEF will be responsible for providing engineers, landscape architects and technicians with the appropriate skills and qualifications to ensure contract compliance. The PEF will be directly responsible for oversight of the project for the Town. The PEF shall indemnify and save harmless the Town for claims and liabilities resulting from negligence, errors or omissions of the PEF; including, but not limited to, the engineers, landscape architects, technicians or subconsultants.

Any firm wishing to be considered must be properly registered with the Office of the Secretary of State and with the North Carolina Board of Registration for Professional Engineers and Land Surveyors, and the North Carolina Board of Registration for Landscape Architects. Any firm proposing to use corporate subsidiaries or subcontractors must include a statement that these

companies are properly registered with the NC Board of Registration for Professional Engineers and Land Surveyors, and the North Carolina Board of Registration for Landscape Architects. The Engineers and Landscape Architects performing the work and in responsible charge of the work must be registered Professional Engineers and Registered Landscape Architects in the State of North Carolina, and must have a good ethical and professional standing. It will be the responsibility of the selected private firm to verify the registration of any corporate subsidiary or subcontractor prior to submitting a Letter of Interest. The firm must have the financial ability to undertake the work and assume the liability.

The selected firm will be required to furnish proof insurance coverage in the minimum amounts listed below:

Workers' Compensation	Statutory Limits
Employers' Liability	\$500,000
General Liability	\$1,000,000
Automobile Liability	\$1,000,000
Umbrella	\$2,000,000
Professional Liability	\$1,000,000

The Town of Cary shall be named as additional insured for General Liability.

The proposed method of payment for this contract is lump sum.

The selection of a private engineering firm to provide site analysis and identification, including coordination and negotiation among land owners, governing bodies and any other affected entities, structural design (trails, trail bridges, parking areas, restrooms, roadways), hydraulics, hydrology, utility coordination, utility engineering (public water and sanitary sewer), floodplain modeling and permitting, wetland impacts, any other required environmental documentation and permitting, and site design on this specific project will be handled in accordance with the following process:

- 1 Submission by the private engineering firm of a Letter of Interest (LOI).
- 2 The Town will short list private engineering firms to a minimum of three firms.
- 3 Pre-interview meeting and oral interview at the option of the Town.
- 4 The Town will select a PEF to provide engineering, site selection and design services.

SMALL PROFESSIONAL SERVICE FIRM (SPSF) PARTICIPATION

The Department encourages the use of Small Professional Services Firms (SPSF). Small businesses determined to be eligible for participation in the SPSF program are those meeting size standards defined by Small Business Administration (SBA) regulations, 13 CFR Part 121 in Sector 54 under the North American Industrial Classification System (NAICS). The SPSF program is a race, ethnicity, and gender neutral program designed to increase the availability of contracting opportunities for small businesses on federal, state or locally funded contracts. SPSF participation is not contingent upon the funding source.

The Firm, at the time the Letter of Interest is submitted, shall submit a listing of all known SPSF firms that will participate in the performance of the identified work. The participation shall be submitted on the NCDOT's Prime Form RS-2 and/or Subconsultant Form RS-2.

Form RS-2 forms may be accessed on the NCDOT website at <https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

The SPSF must be qualified with the Department to perform the work for which they are listed.

Real-time information about firms doing business with the NCDOT and firms that are SPSF certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage or by entering <https://apps.dot.state.nc.us/vendor/directory/> in the address bar of your web browser.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm.

PREQUALIFICATION

The NCDOT maintains a file on each qualified firm that has expressed an interest in providing professional services. Included in this file are a company brochure and Form PREQUAL-1 listing personnel and their qualifications for performing desired work, company's present activities and financial qualifications. At the time this initial information is submitted, a sample of recent work is needed for evaluation.

If your firm and all subconsultants have submitted or updated this data since July 1, 2010, please advise when the new data packet(s) were sent to the Department in the Cover/Introductory Letter with your Letter of Interest (LOI). Having this data on file with the Department eliminates the need to resubmit this data with each letter of interest.

If your firm and/or any subconsultants have not submitted or updated this data since July 1, 2010, please submit the new data to the Department *prior* to submittal of your Letter of Interest (LOI). An application may be accessed at <https://apps03.dot.state.nc.us/vendor/prequal> or a hard/paper copy may be obtained from the Technical Services Division (Contractual Services Unit). Having this data on file with the Department eliminates the need to resubmit this data with each Letter of Interest (LOI).

Even though specific DBE goals are not established for this project, the Department of Transportation is committed to its 2010 annual aspirational goal for Disadvantaged Business Enterprises (DBE) participation of 13.4% in federally funded projects, and to annual aspirational goals for Minority Business Enterprises (MBE) of 8.1% and Women's Business Enterprises (WBE) participation of 8.0% on State funded projects. The Firm, subconsultant, and subfirm shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract.

EVALUATION

Firms shall submit LOI's to perform the following:

- **site analysis and identification of sites (including coordination and negotiation among land owners, governing bodies and any other affected entities)**
- **structural design (trail connections, parking areas, restrooms, roadways)**
- **site design including trail connections to trailhead and signage**
- **cost estimating**
- **surveying**
- **geotechnical services**
- **hydrology, hydraulics (including BMP's) & floodplain modeling (if needed)**
- **identifying all site plan related issues**
- **utility coordination & utility engineering (electrical, public water and sanitary sewer)**
- **permitting**
- **wetland impacts and any other required environmental documentation and permitting**

The following considerations, with the weighted importance, will be utilized to select a minimum of three firms from those submitting an LOI:

1. Firm's experience, knowledge, familiarity and past performance with the above-mentioned services - 30%
2. The experience of the firm's proposed staff to perform the type of work required - 50%
3. Firm's understanding of the project specific issues and their responsibility in delivering services for the advertised project - 20%

North Carolina firms qualified to do the required work will be given priority consideration. A North Carolina firm is a firm that maintains an office in North Carolina staffed with an adequate number of employees judged by the Town to be capable of performing a majority of the work required and is familiar with Town of Cary requirements.

After reviewing qualifications, if firms are equal on the evaluation review, then those qualified firms with proposed SPSF participation will be given priority consideration.

FORMAT FOR SUBMISSION OF A LETTER OF INTEREST TO TOWN OF CARY

All letters of interest are limited to ten (10) pages (RS-2 forms are not included in the page count) inclusive of the cover sheet, and shall be typed on 8 1/2" x 11" sheets, single-spaced, double-sided. Fold out pages are not allowed. In order to reduce costs and to facilitate recycling; binders, dividers, tabs, etc. are prohibited. One staple in the upper left-hand corner is preferred. Please submit eight (8) copies of the proposal and email one as a PDF to Paul Kuhn. *Letters of interest containing more than ten (10) pages will not be considered.*

Section I - Cover/Introductory Letter

The introductory letter should be addressed to Paul Kuhn, Landscape Architect. Said letter should contain the following elements of information:

- Expression of firm's interest in the work;
- Statement of whether firm is on register or submitting information with letter of interest;
- Date of most recent private engineering firm qualification;
- Statement regarding firms' possible conflict(s) of interest for the work
- Identification of Project Manager along with all of their contact information including, phone and email; and
- Summation of information contained in the letter of interest.

Section II - Evaluation Factors

This section should contain information regarding evaluation and other factors listed in the advertisement such as:

- A brief synopsis of the project managers previous site selection, acquisition coordination and trailhead design experience that is focused to the type of project advertised for services ([performed within last five (5) years);
- The number of employees within the firm;
- A brief description of the firm's approach to performing the site selection, acquisition coordination, trailhead design and related services for this work, including the firm's understanding of their responsibilities;
- The proposed personnel to be assigned to the work by discipline, their availability date on the project.
- Identify project personnel/subconsultants' qualifications and experience as related to this work;
- Schedule for project assuming contract is signed and work is ready to begin in January;
- Unique qualifications of key team members; and
- Any innovative approaches to be used.

Section III - Supportive Information

This section should contain the following information:

- Capacity Chart/Graph (available work force);

- Organizational chart indicating personnel to be assigned by discipline;
- The resumes of key personnel;
- Names, classifications, and location(s) of the firms' North Carolina employees and resources to be assigned to the advertised work;
- Statement that consultant agrees to meet the minimum insurance requirements;
- Any proposed changes to the contract; and
- Other information.

Appendices - CONSULTANT CERTIFICATION Form RS-2

Completed Form RS-2 forms **SHALL** be submitted with the firm's letter of interest. This section is limited to the number of pages required to provide the requested information. Submit Form RS-2 forms for the following:

- Prime Consultant firm (Prime Consultant Form RS-2 Rev 1/14/08), and;
- ANY/ALL subconsultant firms (Subconsultant Form RS-2 Rev 1/15/08) to be or anticipated to be utilized by your firm.

Complete and sign each Form RS-2 (instructions are listed on the form)

In the event the firm has no subconsultant, it is required that this be indicated on the Subconsultant Form RS-2 by entering the word "None" or the number "ZERO" and signing the form.

The required forms are available at:

<https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

SUBMISSION OF LETTER OF INTEREST

Private engineering firms are invited to have letters of interest for furnishing site selection, acquisition coordination, trailhead design and related services to the Town of Cary by **12:00 PM on October 25, 2011**. Letters of interest received after this deadline will not be considered.

Firms submitting letters of interest are encouraged to carefully check them for conformance to the requirements stated above. If Letters of Interest (LOI's) do not meet ALL of these requirements, or are sent to any address other than that shown below they will be disqualified. No exception will be granted.

The **mailing** address is:
Paul Kuhn, Landscape Architect
Parks, Recreation and Cultural Resources Department
P.O. Box 8005
Cary, NC 27512-8005

The **delivery** address is:
Paul Kuhn, Landscape Architect
Parks, Recreation and Cultural Resources Department
316 North Academy Street
Cary, NC 27513

Any questions concerning the project should be directed to Paul Kuhn by email at paul.kuhn@townofcary.org or by telephone at 919-469-4360.

NOTIFICATION

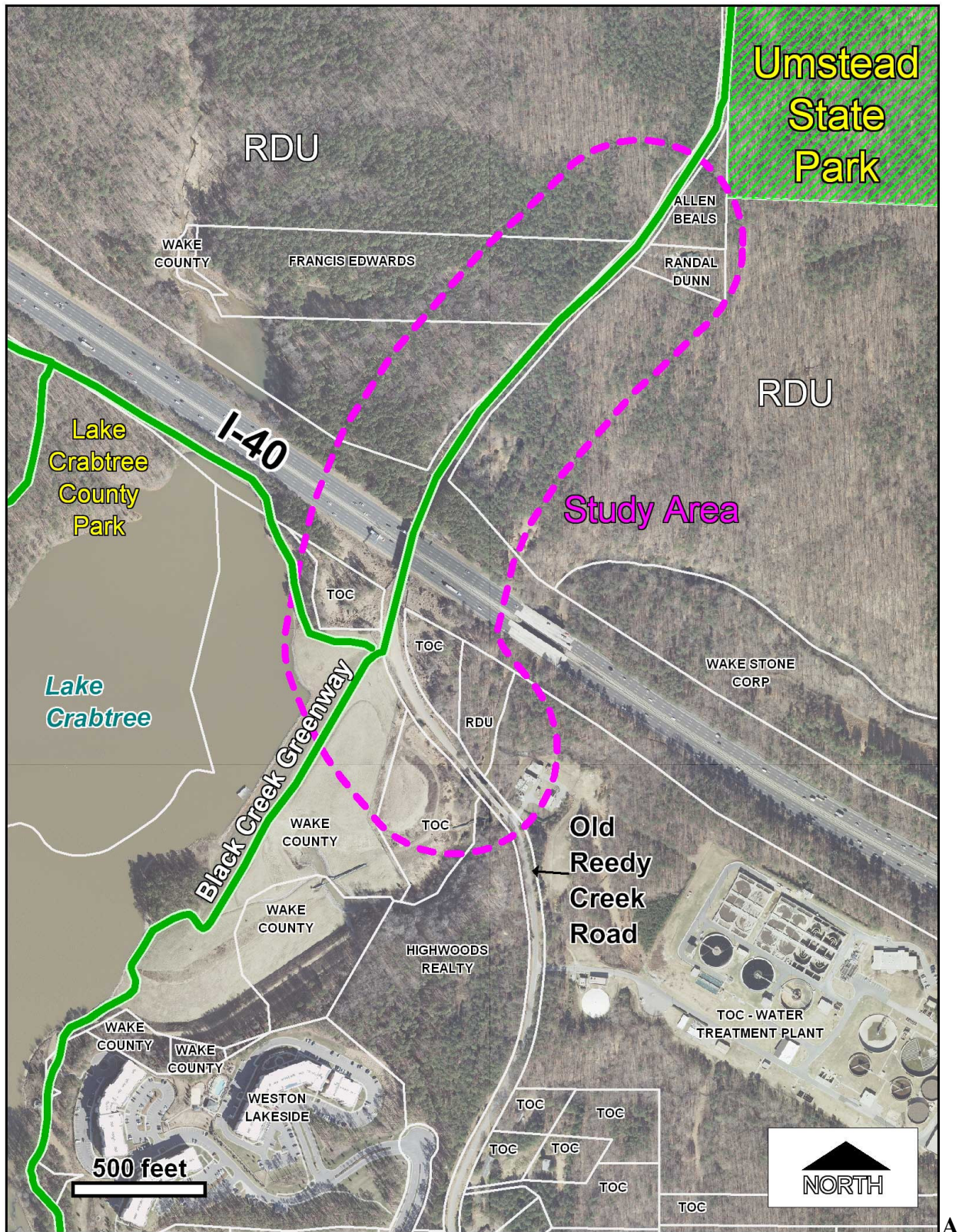
In the event the Town determines that interviews are required, short-listed firms are planned to be notified by email or phone after **November 17, 2011**. Notification will not be sent to firms not short-listed or selected.

The Town of Cary reserves the right to reject any and all Letters of Interest.

ATTACHMENTS

1. Location Map
2. Draft Agreement

Location Map:



AGREEMENT FOR PROFESSIONAL SERVICES

(short version/licensed professional)

This Agreement for Professional Services ('Agreement'), made as of the ____ day of _____, 20__, by and between the Town of Cary (hereafter, "Town") and _____, a professional _____ firm with a partner or principal registered in North Carolina as a licensed _____ and with offices in North Carolina (hereafter, "Professional").

RECITALS

WHEREAS, Town issued a 'Request for Proposals entitled _____ dated _____ ('RFP') and

WHEREAS, Professional responded to such request with a Proposal entitled _____ and dated _____ ('Proposal'); and

WHEREAS, Town chose Professional to provide professional services for Town and Professional desires to provide such services.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

ARTICLE 1

EFFECTIVE DATE AND SCOPE OF SERVICES

- 1.1 The Recitals are incorporated into Agreement. This Agreement shall be effective upon execution by both parties ('Effective Date').
- 1.2 This Agreement is for professional _____ services to be provided by Professional with respect to the Project known as _____, located in the Town of Cary, North Carolina, and generally consisting of _____. Professional shall provide all services including reports and other deliverables as described herein and in Attachment A, attached hereto and incorporated herein by reference ('Basic Services'). Professional shall also provide Additional Services as may from time-to-time be agreed upon by written amendment to this Agreement ('Written Amendment') at the rates, if any, specified in Attachment A. Basic Services and Additional Services are collectively referred to as 'Professional Services' or 'Services.'
- 1.3 Basic Services shall commence after Effective Date and Professional's receipt of a Notice to Proceed from Town and shall be performed in accordance with any schedule contained in Agreement ('Milestone Dates').
- 1.4 Professional represents and agrees that now and continuing for the term of Agreement, Professional:
 - a. is experienced, qualified, skilled and fully capable of performing Services in a competent and professional manner;
 - b. shall exercise reasonable care and diligence, and shall act in the best interest of Town;
 - c. shall act in accordance with generally accepted standards of Professional's practice throughout the U.S.; and shall comply with this Agreement and with all applicable federal, state and local laws, ordinances, codes, rules and regulations (collectively 'Laws and Regulations');
 - d. possesses all necessary qualifications, licenses and certifications;
 - e. shall perform in a timely manner and in accordance with all Milestone Dates or other schedules required under this Agreement, time being of the essence,
 - f. shall work in good faith with Town to meet requirements imposed by the federal or state government or other funding entity if grants are used to fund any portion of Project, and
 - g. the individual(s) signing Agreement have the right and power to do so and bind Professional to the obligations set forth herein and such individuals do so personally warrant that they have such authority.

ARTICLE 2

RESPONSIBILITIES OF PROFESSIONAL

- 2.1 Standard of Care

2.1.1 Professional shall assure that all drawings, specifications, plans, surveys, reports, technical memoranda, testing protocol, designs, electronic databases and other documents and all deliverables ('Documents and Deliverables') prepared by Professional are in accordance with all Laws and Regulations.

2.1.2 Professional shall be responsible for all errors or omissions in Documents and Deliverables and shall correct at no additional cost to Town any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts in the Documents and Deliverables. Professional shall reimburse Town for the aggregate cost to Town for all errors and premium value of omissions of Professional.

2.1.3 In addition to any other damages that might be due to Town hereunder in connection with the breach of this Agreement by Professional, Professional shall reimburse Town for costs, damages and expenses that are the result of errors, omissions or delays of Professional, including those of Professional's subcontractors.

2.1.4 Professional shall expedite and accelerate its efforts as necessary to perform in accordance with this Agreement at no additional cost to Town, if Town reasonably determines that Professional is behind schedule.

2.2 Key Personnel and Subcontractors. No changes in Professional's personnel or subcontractors designated in Attachment A as those who will provide Services shall be permitted except with the prior written consent of Town, which consent shall not be unreasonably withheld. Such replacement personnel and subcontractors shall have the same or higher qualifications and experience as those being substituted. If Professional provides any Services through the use of subcontractors, Professional shall be solely responsible for all aspects of subcontractor(s) conduct and performance. Additionally, Professional's contracts with subcontractor(s) shall include a provision that, in the event this Agreement is terminated for cause by Town, Town may take assignment of such contract of Professional with their subcontractor.

2.3 Taxes, Permits and Licenses. Unless otherwise provided, Professional is responsible for all applicable taxes and license fees and shall acquire all licenses and permits required by Laws and Regulations.

ARTICLE 3 COMPENSATION FOR SERVICES

3.1 Compensation for Basic Services.
[choose one of the options below, or provide something different]

[OPTION 1 – Total Fixed Fee, payable upon completion of each phase or task]

The Total Fixed Fee for Basic Services, which is a 'total' fee that includes all costs and expenses, is \$[REDACTED]. As set forth in Attachment A, Basic Services have been divided into 'phases' or 'tasks.' The Total Fixed Fee for each phase or task is [REDACTED] or is set forth in Attachment A.

Upon the satisfactory completion of each phase or task Professional shall submit to Town an Invoice for that phase or task. The Invoice shall be in a form acceptable to Town and shall show the Services performed in the completion of the phase or task.

Payments for phases or tasks that have been satisfactorily completed will be made by Town within thirty (30) calendar days of receipt of an acceptable Invoice. In the event Town finds any part of an Invoice not to be acceptable, it shall identify to the Professional the part or parts which are not acceptable and shall pay the part or parts of the Invoice which are acceptable. The Town shall have the right to deduct from payments to the Professional any costs or damages incurred, or which may be incurred, by Town as a result of the Professional's failure to perform on any phase or task.

[OPTION 2 – Total Fixed Fee, payable monthly based on percentage of phase or task completed in previous month.]

The Total Fixed Fee for Basic Services, which is a 'total' fee that includes all costs and expenses, is \$ _____. As set forth in Attachment A, Basic Services have been divided into 'phases' or 'tasks.' The Total Fixed Fee for each phase or task is _____ or is as set forth in Attachment A.

Professional shall submit monthly to Town an Invoice for Services performed the previous month. The Invoice shall be in a form acceptable to Town and shall show all Services performed the previous month and the payment requested for those Services. The requested payment shall not exceed the ratio to the Total Fee for that phase or task that the completed Services bear to all the Basic Services required for that specific phase or task.

Payments will be made by Town within thirty (30) calendar days of receipt of an acceptable invoice. In the event Town finds any part of an invoice not to be acceptable, it shall identify to the Professional the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. The Town shall have the right to deduct from payments to the Professional any costs or damages incurred, or which may be incurred, by Town as a result of the Professional's failure to perform on any phase or task.

OPTION 3 – Other Fee Basis. _____

[insert other fee basis here. Address all points addressed in Options 1 and 2, such as need for invoice to be in form acceptable to town, etc...]

- 3.2 Compensation for Additional Services. Additional Services shall be as set forth in Written Amendment. Payments for Additional Services that have been properly approved and satisfactorily completed will be made by Town within thirty (30) calendar days of receipt of an invoice that is in form and substance acceptable to Town. In the event the Town finds any part of an invoice not to be acceptable, it shall identify to the Professional the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. Town shall have the right to deduct from payments to Professional any costs or damages incurred, or which may be incurred, by Town as a result of Professional's failure to perform any Service. Unless otherwise agreed, compensation shall be on a time-spent basis at the hourly rates shown in Attachment A.

- 3.3 Reimbursable Expenses. There are no reimbursable expenses.

[OPTIONAL use only if the parties agree that there are reimbursable expenses:

Reimbursable expenses are set forth on Attachment A. Town shall reimburse such expenditures up to amounts authorized by Town to the extent such expenses are reasonable and actually incurred by Professional. Professional shall not be entitled to any mark-up on actual expenses incurred.]

- 3.4 Accounting Records and Other Records. Accounting records of Professional's compensation for Services and Additional Services (and Reimbursable Expenses, if permitted under this Agreement) shall be maintained by Professional in accordance with generally accepted accounting practices and shall be available for inspection and copying by Town at mutually convenient times for a period of three (3) years after termination of this Agreement.

ARTICLE 4 RESPONSIBILITIES OF TOWN

- 4.1 Cooperation and Coordination. In addition to being responsible for the duties set forth as duties or responsibilities of Town in RFP, Town may designate, in writing, a person to act as project manager who shall coordinate the project work and who shall be available during working hours as often as may be reasonably required to render decisions within guidelines established by the Town manager and to furnish

information. Town shall examine documents submitted by Professional and shall make reasonable efforts to render timely decisions pertaining thereto.

ARTICLE 5 INSURANCE

- 5.1 **Insurance.** Professional and Professionals permitted subcontractors shall purchase and maintain during the period of performance and for three years after the termination of this Agreement insurance for protection from claims under workers' or workmen's compensation acts; Comprehensive General Liability Insurance (including broad form contractual liability and complete operations, explosions, collapse, and underground hazards coverage) covering claims arising out of or related to bodily injury, including bodily injury, sickness, disease or death of any of Professionals' employees or subcontractors or any other person and to real and personal property; Comprehensive Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering bodily injury or death, and property damage; and Professional Liability Insurance (if applicable) covering personal injury, bodily injury and property damage and claims arising out of or related to Professional's performance under this Agreement.

The minimum insurance ratings for any company insuring the Professional shall be Best's A-. Should the ratings of any insurance carrier fall below the minimum rating, the TOWN may, at its option, require the Professional to purchase insurance from a company whose rating meets the minimum standard. Professional's insurance carrier(s) shall be licensed and admitted to do business in the state of North Carolina. If Professional is unable to find a licensed and admitted carrier for any line of insurance coverage, Professional shall notify Town in writing.

Unless otherwise specified on Attachment B, minimum limits of insurance coverage are:

General Liability	\$1,000,000 per occurrence
Commercial Automobile Liability	\$1,000,000 CSL
Commercial Excess Liability / Umbrella Policy	\$1,000,000 per occurrence
Workers Comp	Statutory Limits
Employers Liability	\$ 500,000 per occurrence
Professional Liability	\$1,000,000 per occurrence

All insurance policies (except Worker's Compensation and Professional Liability) shall name Town as an additional insured party. Evidence of such insurance shall be furnished to the Town, together with evidence that each policy provides that the Town shall receive not less than thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, Professional shall procure substitute insurance so as to assure Town that the minimum limits of coverage are maintained continuously throughout the periods specified herein. Certificate of Insurance and all endorsements required shall be provided at, or prior to, execution of this Agreement.

Insurance policies required hereunder shall include provisions or endorsements that:

- a) the insurer shall have no right of recovery or subrogation against Town, its agents or agencies, it being the intention of the parties that the insurance policies shall protect Town and be primary coverage for any and all losses covered by the policies;
- b) the clause "other insurance provisions" in a policy in which Town, its agents or agencies is named as an insured, shall not apply to such insured parties;
- c) the insurance companies issuing the policy or policies shall have no recourse against Town, its

agents or agencies for the payment of any premiums or for assessments under any form of policy;

- d) any and all deductibles under the insurance policies shall be assumed by and be at the sole risk and expense of Professional;
- e) coverage shall be deemed to be in connection with this Agreement as revised by any Written Amendments; and
- f) coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Town and Professional.

ARTICLE 6 DAMAGES AND REMEDIES

6.1 Services, Reimbursement and Deductions.

6.1.1 Professional shall reimburse Town for costs, damages and expenses, including attorney's fees and expert's fees incurred by Town if such costs, damages and expenses are the result of any error, omission or delay of, or failure by Professional to perform as required by Agreement.

6.1.2 In addition to any other remedies available to Town, Town shall have the right to deduct from payments to the Professional any costs, damages and expenses, including attorney's fees, that have been or may be incurred by Town as a result of Professional's failure to perform as required by Agreement.

6.2 Indemnities.

6.2.1 General Indemnity. To the fullest extent permitted by Laws and Regulations, Professional shall indemnify and hold Town, its officers and employees, harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities and damages (including but not limited to professionals' fees and charges and all court or other dispute resolution costs), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by Professional of any term or condition of this Agreement or Written Amendment, (b) any breach or violation by Professional of any applicable Law or Regulation, or (c) any other cause resulting from any act or failure to act by Professional under this Agreement or Written Amendment, but only to the extent caused by any negligence or omission of Professional. This indemnification shall survive the termination of this Agreement.

6.2.2 Intellectual Property Indemnity. To the fullest extent permitted by Laws and Regulations, Professional shall indemnify and hold Town, its officers and employees harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities and damages (including but not limited to all professionals' fees and charges and all court or arbitration or other dispute resolution costs), by whomsoever brought or alleged, arising out of or related to infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Town in writing. If Professional has reason to believe the use of a required design, process or product is an infringement of a patent, copyright or other intellectual property, the Professional shall be responsible for such loss unless such information is promptly given to the Town.

6.3 Non-Exclusivity of Remedies/No Waiver of Remedies. A party's selection of one or more remedies for breach of this Agreement shall not limit that party's right to invoke any other remedy available under this Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised from time-to-time and as often as deemed expedient.

- 6.4 Waiver of Damages. Professional shall not be entitled to, and hereby waives any monetary claims for, or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any consequential damages.

ARTICLE 7 AMENDMENTS TO AGREEMENT

- 7.1 Changes in the Basic Services. Changes in the Basic Services and entitlement to additional compensation or a change in duration or any other term of this Agreement shall be made only by a Written Amendment. Town may, without invalidating Agreement, make written changes in Services by preparing and executing a Written Amendment. Within three (3) days of receipt of such Written Amendment, Professional shall notify Town in writing of any change contained therein that Professional believes significantly increases or decreases Services and request an adjustment in compensation with respect thereto. If Written Amendment significantly increases or decreases Services, the compensation may be equitably adjusted.

ARTICLE 8 TERMINATION AND SUSPENSION

- 8.1 Termination for Convenience of Town. This Agreement may be terminated without cause by Town and for its convenience upon ten (10) days written notice to Professional.

- 8.2 Other Termination. After ten (10) days written notice to the other party of its material breach of the Agreement, this Agreement may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.

- 8.3 Compensation After Termination.

8.3.1 In the event of termination for the convenience of Town, Professional shall be paid that portion of its fees and expenses that it has earned to the date of termination, plus five percent (5%) of its Compensation for Basic Services earned to date or of its unearned Compensation for Basic Services, whichever is less, less any costs or expenses incurred or anticipated to be incurred by Town due to errors or omissions of Professional. Upon receiving notice of termination, Professional shall immediately terminate any ongoing Services it is to provide hereunder.

8.3.2 In the event of termination by reason of a material breach of the Agreement by Town, Professional shall be entitled to the same compensation as it would have received had Town terminated the Agreement for convenience, and Professional expressly agrees that said compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination.

8.3.3 In the event of termination by reason of a material breach of the Agreement by Professional, Professional shall be paid that portion of its fees and expenses that it has earned to the date of termination, less any costs or expenses incurred or anticipated to be incurred by Town due to errors or omissions of Professional or by reason of Professional's breach of this Agreement.

8.3.4 Should this Agreement be terminated for any reason, Town shall nevertheless have the right to require Professional to (a) turn over to Town all finished or unfinished Documents and Deliverables and (b) expend such additional effort as may be necessary to provide to the Town professionally certified and sealed reports and such other information and materials as may have been accumulated by Professional in the performance of this Agreement, whether completed or in process. If Professional provides such certified and sealed information as outlined above, Professional shall be compensated in accordance with this Agreement.

- 8.4 Survival. Termination of this Agreement, for whatever reason, shall not terminate a party's representations and warranties nor nullify any indemnity hereunder.

8.5 Suspension

8.5.1 Town may order Professional in writing to suspend, delay or interrupt all or any part of the Services for the convenience of Town.

8.5.2 In the event Professional believes that any suspension, delay or interruption of the Services ordered by Town may require an extension of the duration of Basic Services or an increase in the level of staffing by Professional, it shall so notify Town and propose an amendment to Agreement, which shall be effective only upon the written approval of Town. In the event the duration of Basic Services is extended or shortened or the level of staffing by Professional is increased or decreased, the Compensation for Basic Services may be equitably adjusted by Written Amendment.

8.5.3 A suspension, delay or interruption of the Services shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of Services for a period exceeding ninety (90) days, the Compensation for Basic Services may be equitably adjusted by Written Amendment.

**ARTICLE 9
OWNERSHIP OF DOCUMENTS AND DELIVERABLES**

9.1 Ownership of Documents and Deliverables. Town shall be granted, at no additional cost, ownership of all Documents and Deliverables. Professional shall turn over to Town in good unaltered condition, reproduces as described in Section 10.8 of all Documents and Deliverables prior to final payment, if not delivered earlier hereunder, or within seven (7) days after termination if this Agreement is terminated for any reason. Professional may retain one set of Documents and Deliverables for its records.

9.2 Termination. In the event of termination, for whatever reason, should Town use drawings or other Documents or Deliverables for completion of the Project, Town shall indemnify and hold Professional harmless from and against any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by Town or a Contractor in connection with Town's improper use (or misuse) of Documents and Deliverables.

9.3 Other Projects. Documents and Deliverables may be used by Town for any reason without additional compensation to the Professional. Such use of Documents and Deliverables by Town shall be at the full risk of Town.

**ARTICLE 10
ADDITIONAL PROVISIONS**

10.1 Dissemination of Information. Town takes efforts to assure that accurate information about the Town is disseminated such that neither the public trust nor the public's perception of Town impartiality is compromised. Professional, mindful of those efforts, agrees that it shall not publicly disseminate any information concerning Services without prior approval of Town. Any approval by Town may be given with certain stipulations, such as Town's participation in the creation of the public product or Town's review and the option to refuse ultimate release of the final product should it fail to meet the Town's standards and goals. Publicly disseminate means but is not limited to electronic, video, audio, photographic or hard copy materials serving as, in whole or part, advertising, sales promotion, professional papers or presentations, news releases, articles, or other media products, and/or Professional's business collateral pieces. Notwithstanding the foregoing, the parties agree that Professional may list Town as a reference in response to requests for proposal and may identify the Town as a customer in presentations to potential customers.

10.2 Limitation on Assignment. Each party binds itself, its successors, permitted assigns and legal representatives to the terms of this Agreement. Neither Town nor Professional shall assign or transfer its interest in this Agreement without the written consent of the other.

- 10.3 Governing Law. This Agreement and the duties, responsibilities, obligations and rights of respective parties hereunder shall be governed by the laws of the State of North Carolina.
- 10.4 Dispute Resolution. No services shall be delayed or postponed pending the resolution of any dispute unless Town otherwise agrees in writing. Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or non-performance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Wake County, North Carolina and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions. If and to the extent the project is subject to the dispute resolution requirement of N.C.G.S. 143-128(f1), then Professional shall participate in the dispute resolution process which shall be considered part of Basic Services unless specifically agreed otherwise herein.
- 10.5 Extent of Agreement. This Agreement represents the entire and integrated agreement between Town and Professional and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by Written Amendment.
- 10.6 Severability. If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.
- 10.7 Conduct. Town has adopted a Mission Statement and Statement of Values. To support these values, Town has published Working with the Town of Cary—A Guide for Temporary Employees, Contractors, Consultants, and Volunteers. To the extent consistent with the terms and conditions of Agreement, Professional agrees to support and abide by the policies and elements contained in the chapters titled ‘Our Culture’ and ‘Working with the Media’ in such publication.
- 10.8 Protocol for Documents and Deliverables. Professional shall provide all Documents and Deliverables in electronic form to the Town in read-only MS-Windows compatible format (including either screen readable .pdf or HTML formats). All drawings shall be CAD generated and shall be provided on electronic media downloadable onto an AutoCAD based system. In order to meet US Justice Department standards for Internet accessibility, all Deliverables (draft and final) intended for presentation on the Town of Cary’s Web site must be provided in a manner and format compatible, consistent, and in compliance with all Town technology standards. Such material must be provided in screen readable PDF or HTML versions, be screen-reader friendly and contain alternate text tags of no more than 34 characters.. In the event that Professional notices any errors in electronic data provided to the Town under this Agreement, Professional shall immediately notify Town, and if Professional provided such electronic data, Professional shall immediately replace same with correct versions thereof.
- 10.9 Notice. Whenever any provision of this Agreement requires the giving of written notice, it will be deemed to have been validly given if (i) delivered in person to the Project Manager, if to the Town, or to the Project Manager, or equivalent position, or officer/member of the entity that is the Professional, if to the Professional, or (ii) if delivered at or sent by a nationally recognized overnight courier service or overnight express mail or registered or certified mail, postage prepaid, to the Town’s or Professional’s address. The date of said notice shall be the date of such delivery or mailing.

The notice address for the Town shall be:

Department
Town of Cary
PO Box 8005 / 316 North Academy Street
Cary, NC 27512

The notice address for the Professional shall be:

- 10.11 Gifts and Favors. Professional shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including G.S. §14-234, G.S. §133-1, and G.S. §133-32.
- 10.11 Public Records. Professional acknowledges that records made or received in connection with the transaction of public business are public records and subject to public records requests. Town may provide copies of such records, including copyrighted records, in response to public record requests. Professional shall make Town aware of any public records requests made in regard to Services or this Agreement.
- 10.12 Resolving Discrepancies. Except as otherwise stated in Agreement, the provisions of Agreement take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Agreement and the Attachments and the provisions of any standard, specification, manual, code or instruction of any technical society, organization or association (collectively 'Other Standards'), provided that if any of the Other Standards impose a more stringent standard or obligation upon Professional than in the Agreement, the Other Standard shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of this Agreement and the Other Standard.
- 10.13 Non-exclusive Remedies/No Waiver. The selection of one or more remedies for breach shall not limit a party's right to invoke any other remedy available under Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof.

IN WITNESS WHEREOF, Professional and Town, being duly authorized, have caused these presents to be signed in their names as of the day and year first above written, on the following pages.

[See: Signature Requirements for Town of Cary Contracts]